

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13787 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PARIMAL V. CHOTAI, PRESENTLY WORKING AS SUPERVISOR IN THE

Versus

COMMISSIONER JANNAGAR MUNICIPAL CORPORATION,

Appearance:

MR PV HATHI for Petitioner

MR JR NANAVATI for Respondent No. 1

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/10/1999

ORAL JUDGEMENT

#. The petitioner, an officer of the Jamnagar Municipal Corporation, Jamnagar complaining before this court against the wholly arbitrary action of the respondent No.1 denying him promotion to the post of Junior Engineer from the post of Supervisor. The person, junior to the petitioner i.e. the respondent Nos. 2 to 3 were

promoted but he was superceded. This gives rise cause to the petitioner for filing of this petition in this court.

#. The petitioner entered in the service of the Corporation as a Workcharge Supervisor under the order dated 18/12/1986. Under the order dated 29/1/1987 he was appointed on probation for a period of six months after following due process of selection and interview. On completion of probation period he has been confirmed on the post of Supervisor. The petitioner is a graduate in Civil Engineering. The respondent Nos. 2 and 3 were also confirmed on the post of Supervisor but, they were junior to the petitioner. Under Resolution No.390 dated 22/10/1992 of the Standing Committee of the Corporation, 7 (seven) posts of Junior Engineers were created. On 19/11/1992 the Civil Suit No.578/92 was filed by the Diploma Holders for their promotion on these posts of the Junior Engineers. The General Body of the Corporation on 28/11/1992 resolved to keep the ratio of 4 degree holders and 3 diploma holders out of 7 (seven) posts and the criteria for promotion is laid down to be seniority-cum-efficiency. On 19/1/1993 interviews were held by the Corporation of all the eligible candidates including petitioner. Respondent Nos. 2 and 3 were promoted along with other diploma holders and the petitioner was left out. On 20/1/1993 the petitioner made a detailed representation voicing his grievance as against his supersession. He pointed out that his service record was absolutely clean, while the departmental inquiry of serious charges were pending against respondent No.3. The petitioner was the only person selected for undergoing the training of leak detection in water pipelines and distribution systems. This representation of the petitioner was turned down by the Corporation vide its communication dated 22/6/1993. Hence this Special Civil Application before this court.

#. This petition has been contested by the respondent No.1 by filing detailed reply to the same. The respondent Nos. 2 and 3 have not chosen to file reply to the Special Civil Application. The respondent No.1 submitted that the promotions were made on the recommendation of the Staff Selection Committee of the Corporation which met on 19/1/1993. This Committee was consisted of (1) Municipal Commissioner, (2) Deputy Municipal Commissioner, (3) Chief Auditor and (4) Mr. B.A.Songara, Executive Engineer, Panchayat (R. & B.) Division No.2 as an Expert. The Committee conducted interview of the eligible candidates for promotion to the post of Junior Engineer from the post of Supervisors. The selection Committee after taking interview passed

resolution on 19/1/1993 that 7 (seven) candidates were selected for promotion. The criteria for selection of candidates adopted is seniority-cum-efficiency. The petitioner had appeared before the Selection Committee though it is a different matter that he could not be selected. He cannot make any grievance. It is stated that the criteria adopted by the Selection Committee was perfectly legal and justified. Seniority alone cannot be the criteria for promotion for the post of Junior Engineer. So far as the case of the respondent No.3 is concerned, the Corporation admitted as a fact that the departmental inquiry was pending against him but it is stated because of the pendency of inquiry his case could not have been kept away from consideration.

#. The learned counsel for the petitioner contended that it is a case of the promotion and more so first promotion in the service for which the criteria has been provided by the Corporation of seniority-cum-efficiency and the same should have been made only on this criteria. The criteria of the selection has been applied in the case of promotion. It should not have been gone by the Selection Committee but by departmental promotion Committee and when the record of the petitioner even it was average the senior should have been given the promotion. It has next been contended that in the service record of the petitioner no adversity has been pointed out. Admittedly his record was clean and he is senior to respondent No.3. But he has been superseded without giving any reasons whatsoever. Once the Corporation has provided the criteria for promotion to be of seniority-cum-efficiency, the seniority should have been given weightage and preference unless the record of the senior is not satisfactory or he was found to be positively unsuitable for promotion. Here the interview is taken negligent for promotion. Even if it is to be followed, then due weightage has to be given to seniority and the service record of the petitioner and not the decision should have been taken only on the basis of the performance of a candidate in interview. Lastly, it is contended that this selection was not fair, reasonable and impartial. An officer against whom departmental inquiry is pending has been selected, which goes to show that the Selection Committee acted arbitrarily. In the case of the officer against whom departmental inquiry is pending though his case could have been considered but there is no question of giving promotion to him so long as he is not exonerated in the departmental inquiry.

#. Shri J.R.Nanavati, learned counsel for the respondent-Corporation substantially admitted the case of

the petitioner. His only contention is that though it is a case of the promotion but it could have been made solely on the basis of performance of the candidates in the interview.

#. I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties.

#. It is a case of the first promotion in the service of the petitioner. Normal rule should have been promotion on the criteria of seniority-cum-efficiency. While creating the 7 (seven) posts of Junior Engineers the Corporation has itself laid down that same are to be filled in by promotion on the criteria of seniority-cum-efficiency. In such criteria there is no element of selection. The rule making authority no doubt may have provided that promotions are to be made only on the basis of selection but I do not find anything on the record of this Special Civil Application where such a provision has been made by the Corporation.

#. The learned counsel for the respondent-Corporation fairly submitted that Corporation has not laid down that these posts are to be filled in by selection. In case this criteria is not there and in fact as said earlier the criteria was only of seniority-cum-efficiency there cannot be any comparative assessment of merit of the candidates. Interview in such matters is not called for. The promotions are to be made on the recommendation of the Selection Committee still service record has to be seen even where his service record is average he has to be given preference in the promotion as there is no question of any element of comparative assessment of the merits of the eligible candidates. Moreover, in case where criteria of promotion has been laid down of seniority-cum-efficiency I fail to see how the Selection Committee could have adopted the criteria of selection. The Selection Committee cannot lay down its own criteria for the promotion other than what it is provided by the Corporation. In this case, the Selection Committee has considered itself as an authority to decide the mode of the recruitment on the post of Junior Engineer. Merely because this was given name of selection committee it could not have been adopted the criteria of selection for promotion in these matters. The calling of the candidates for interview is not justified. Learned counsel for the respondent fairly stated that this promotion is given solely on the basis of performance of the candidates in the interview. Otherwise also on the record of this Special Civil Application, the Corporation has not produced the report of the Selection Committee

nor any other document to show that while recommending for promotion the weightage has been given to the seniority and the service record of the candidates. I find sufficient merit in the contention of the learned counsel for the petitioner that the Selection Committee has not acted fairly in making selection of a candidate against whom departmental inquiry was pending. It is true merely on pendency of departmental inquiry case of that person could not have been excluded for consideration but he cannot be given promotion. In such matters the procedure of seal cover should have been adopted but how straightaway promotion could have been given. That clearly shows that the Selection Committee has not acted fairly, reasonably and impartially. In such matters even if the interviews are to be taken then its number should have been only of negligible percentage and due weightage has to be given to the seniority and service record. What that has not been done. The promotions which are made on the basis of criteria of selection is otherwise suffers from the voice of arbitrariness.

In the result, this Special Civil Application succeed and the same is allowed and it is hereby declared that supersession of the petitioner made in the matter of promotion to the post of Junior Engineer is wholly arbitrary and unjustified. The respondents are directed to consider the case of the petitioner for promotion only on the criteria of seniority-cum-efficiency and in case he is found suitable by the Departmental Promotion Committee he shall be entitled for all the consequential benefits from the date his junior, respondent Nos. 2 and 3 were given promotion. The respondent-Corporation is directed to pay Rs.500/- to the petitioner as what this amount has been charged by Mr.P.V.Hathi towards fees for rendering his professional services to the petitioner. Rule is made absolute accordingly.

(S.K.Keshote, J.)

*Pvv